

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS WHITLOW,

Defendant.

4:14-CR-3015

ORDER

The defendant has filed a motion to alter or amend the judgment pursuant to [Fed. R. Civ. P. 59\(e\)](#) ([filing 390](#)) with respect to the Court's Order ([filing 388](#)) and Judgment ([filing 389](#)) denying his Motion to Vacate under [28 U.S.C. § 2255](#) ([filing 387](#)). He claims that the Court erred by not considering his argument for equitable tolling. *See* [filing 390 at 1-4](#).

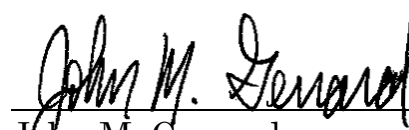
The Court didn't consider an equitable tolling argument because the defendant didn't make one. *See* [filing 387](#). And Rule 59(e) doesn't allow an argument to be presented after judgment when it could have been presented earlier. *Anjulo-Lopez v. United States*, 541 F.3d 814, 818 n.3 (8th Cir. 2008).

But even had the defendant raised "equitable tolling," it wouldn't have made a difference. Equitable tolling can extend § 2255's statute of limitations. *See* *United States v. Martin*, 408 F.3d 1089, 1092 (8th Cir. 2005). But it doesn't permit a second or successive motion § 2255 motion without authorization from the Court of Appeals. *See* § 2255(h).

IT IS ORDERED that the defendant's motion to alter or amend the judgment ([filing 390](#)) is denied.

Dated this 8th day of July, 2019.

BY THE COURT:



John M. Gerrard
Chief United States District Judge